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TESLA MOTORS, INC. and ELON MUSK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TESLA MOTORS, INC. and ELON MUSK,

Petitioners,

vs.

CHRISTINA BALAN,

Respondent.

Case No. 3:21-cv-9325

**PETITION TO CONFIRM
ARBITRATION AWARD**

Petitioners, TESLA MOTORS, INC., and ELON MUSK, (“Petitioners”), by and through their attorneys, MORGAN, LEWIS & BOCKIUS LLP, for its Petition to Confirm Arbitration Award against CHRISTINA BALAN (“Respondent” or “Ms. Balan”) allege as follows:

SUMMARY OF PROCEEDINGS

1. Tesla Motors Inc., (“Tesla”), and Elon Musk seek judicial confirmation of an arbitration award rendered against a former employee, Ms. Balan.
2. On January 15, 2019, Ms. Balan filed a lawsuit against Tesla for defamation in the United States District Court for the Western District of Washington. Complaint, *Balan v. Tesla Motors Inc.*, No. C19-67 MJP (W.D. Wash. Jan. 15, 2019), ECF No. 1. Ms. Balan’s defamation claim was based on a statement made by Tesla on September 11, 2017. *Id.* at 2.
3. On April 18, 2019, Tesla filed a motion to compel arbitration on the grounds that Ms.

1 Balan's claims were subject to a mandatory arbitration agreement contained in her employment
2 agreement with Tesla. Motion to Compel Arbitration, *Balan v. Tesla Motors Inc.*, No. C19-67
3 MJP (W.D. Wash. Apr. 18, 2019), ECF No. 17. The arbitration agreement provided that the
4 arbitration should be conducted before JAMS in San Francisco, California. The arbitration
5 agreement further provided that California law would apply to Ms. Balan's claims. *See*
6 Declaration of Nicole White in Support of Motion to Compel Arbitration at 14, *Balan v. Tesla*
7 *Motors Inc.*, No. C19-67 MJP (W.D. Wash. Apr. 18, 2019), ECF No. 18.

8 4. On June 27, 2019, the district court granted in part and denied in part Tesla's motion to
9 compel arbitration, ordering that the litigation of some of the alleged defamatory statements were
10 subject to arbitration and some were not, thereby splitting Ms. Balan's claims. *Balan v. Tesla*
11 *Motors, Inc.*, No. C19-67 MJP, 2019 WL 2635903 (W.D. Wash. June 27, 2019).

12 5. On or about July 12, 2019, Ms. Balan filed a demand for arbitration with JAMS in San
13 Francisco regarding the claims that the district court held were subject to arbitration.

14 6. On July 29, 2019, Tesla filed an appeal of the district court's order. Notice of Civil
15 Appeal, *Balan v. Tesla Motors Inc.*, No. C19-67 MJP (W.D. Wash. July 29, 2019), ECF No. 42.

16 7. On August 9, 2019, the employment arbitration commenced before JAMS. A copy of the
17 notice of commencement of the arbitration is annexed hereto as Exhibit "A".

18 8. On September 3, 2019, the Honorable Richard J. McAdams (Ret.) was appointed as an
19 Arbitrator. A copy of the appointment of arbitrator is annexed hereto as Exhibit "B".

20 9. On July 8, 2020, the Arbitrator granted a stay of the arbitration pending the appeal before
21 the Ninth Circuit. A copy of the order is annexed hereto as Exhibit "C".

22 10. On March 22, 2021, the Ninth Circuit issued its Memorandum decision reversing the
23 district court's partial denial of Tesla's motion to compel arbitration and ordering that Balan's
24 entire defamation claim was subject to mandatory arbitration. *Balan v. Tesla, Inc.*, 840 F. App'x
25 303 (9th Cir. 2021).

26 11. On April 22, 2021, the district court issued its order closing the case. Order Closing Case,
27 *Balan v. Tesla Motors Inc.*, No. C19-67 MJP (W.D. Wash. Apr. 22, 2021), ECF No. 75.

28 12. On May 24, 2021, Ms. Balan amended her Demand for Arbitration to add Mr. Musk as a

1 party and asserted a separate defamation claim against him based on an allegedly defamatory
2 statement made two years earlier in August 2019.

3 13. On June 15, 2021, Tesla and Mr. Musk filed an Answer to Ms. Balan's Amended
4 Demand, which included a statute of limitations defense to each defamation claim.

5 14. On September 22, 2021, Petitioners filed a Motion to dismiss Ms. Balan's defamation
6 claims asserting that the defamation claims were each time-barred under California's one-year
7 statute of limitations.

8 15. On November 3, 2021, the Arbitrator granted Petitioners' Motion to Dismiss and issued
9 an Award providing for a complete defense to all of Ms. Balan's claims. A copy of the order and
10 award is annexed hereto as Exhibit "D". The Arbitrator found that each of Ms. Balan's claims are
11 time-barred by the one-year California statute of limitation for defamation claims. For the first
12 claim against Tesla, the Arbitrator concluded that none of Ms. Balan's reasons presented in her
13 opposition serve as a cognizable basis for finding an exception to the applicable one-year
14 California statute. As for the second claim against Mr. Musk, the Arbitrator found the claim is
15 likewise time-barred. Additionally, the Arbitrator concluded that Ms. Balan presented no
16 evidence that Tesla or Ms. Musk individually prevented or dissuaded Ms. Balan from pursuing
17 litigation or arbitration based on the purported defamatory statements that were allegedly made on
18 September 11, 2017 and August 7, 2019.

19 16. Tesla and Elon Musk now seek an order from this Court under the Federal Arbitration Act
20 9 U.S.C. § 9, confirming the Arbitration Award dated November 3, 2021 rendered in an
21 arbitration before JAMS Arbitration and entry of judgment against Ms. Balan thereon pursuant to
22 9 U.S.C. § 13.

23 PARTIES

24 17. Tesla is a corporation that is incorporated in the State of Delaware and has its principal
25 place of business in California.

26 18. Elon Musk is the Corporate Executive Officer ("CEO") of Tesla and a resident of Texas.

27 19. Upon information and belief, Ms. Balan is an individual who resides in Mukilteo,
28 Washington. Upon information and belief, respondent is a citizen of Romania. Ms. Balan was a

1 former employee of Tesla from August 2, 2010 through January 18, 2013, and from June 18,
2 2013 through April 16, 2014. She was employed by Tesla as Senior CAD Design Engineer
3 responsible for certain automotive design projects.

4 **JURISDICTION AND VENUE**

5 20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
6 1332(a)(2) because there is complete diversity between the parties and the amount in controversy
7 exceeds \$75,000, exclusive of interest and costs.

8 21. Venue is proper in this judicial district pursuant to 9 U.S.C. § 9 because the arbitration
9 award was made in this district.

10 **FACTS**

11 22. Attached hereto as Exhibit “E” is a true and correct copy of the arbitration agreement
12 between the parties.

13 23. Attached hereto as Exhibit “D” is a true and correct copy of order and Arbitration Award
14 dated November 3, 2021, but not served until November 23, 2021.

15 24. The Award has not been vacated under 9.U.S.C. § 10, or modified or corrected under 9
16 U.S.C. § 11.

17 25. Pursuant to 9 U.S.C. § 9, Petitioner has brought this action within one year after the
18 Award was made on November 3, 2021.

19 **CLAIM FOR RELIEF**

20 26. Petitioner repeats and realleges paragraphs 1 through 25 hereof, as if fully set forth within.

21 27. Section 9 of the Federal Arbitration Act requires that a Court confirm an Arbitrator’s
22 Award, upon application made within one (1) year, unless the Award is vacated, modified, or
23 corrected under Section or 11 of the Federal Arbitration Act.

24 28. Petitioner brings this application within (1) year of the Arbitration Award.

25 29. The Arbitration Award is a final and binding resolution of the dispute between Petitioners
26 and Ms. Balan which now requires confirmation by this Court to effectuate the relief contained
27 therein.

28 30. By reason of the foregoing, the court should issue an order confirming the Arbitration

1 Award annexed hereto as Exhibit “D” by JAMS Arbitration dated November 3, 2021 and direct
2 that judgment be entered thereon.

3 **WHEREFORE**, Petitioner respectfully requests that this Court issue an order pursuant to
4 9 U.S.C. § 9:

- 5 a. Confirming the Arbitration Award annexed hereto as Exhibit “D” by JAMS
6 Arbitration dated November 3, 2021,
7 b. Order Ms. Balan to comply with the terms of the Arbitration Award dated
8 November 3, 2021; and
9 c. Award the Petitioner such other and further relief as this Court deems just and
10 proper.

11
12 Dated: November 24, 2021

Respectfully Submitted,

13 MORGAN, LEWIS & BOCKIUS LLP
14

15 By /s/ Michael D. Weil
16 Michael D. Weil
17 Attorneys for Petitioners
18 TESLA MOTORS, INC. and ELON
19 MUSK
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